

Meekins, on the 18th of July, 1851, is to open and rescind the order of the 23d of April, 1850, confirming the Auditor's report of the 18th of the preceding month of March, which report was filed on the 23d of the same month. The report so confirmed had distributed the residue of the proceeds of the sales, after paying costs and commissions and the preferred claim of the complainant, among the creditors of John Beard, giving a small dividend to each; and the petition prays that this order may be rescinded, and the residue applied to the payment of the claim of the petitioner, in exclusion of the other creditors, upon the ground that the petitioner is a judgment creditor, and entitled as such to a preference.

The decree which was passed on the 2d of July, 1849, directed the trustee to give notice to creditors to come in by a time limited with the vouchers of their claims, and all the usual necessary steps having been taken, the Auditor appropriated the proceeds of the sales among the parties apparently entitled, and his report making the appropriation was duly ratified and confirmed on the 23d of April, 1850, and the trustee directed to apply the proceeds accordingly. This order remained unchallenged for nearly fifteen months, and then, for the first time, the Court is called upon by petition to open and cancel it, and give a different direction to the money.

Whatever may be the true extent of the powers of this Court over money raised by its decrees, my impression is, that under the circumstances of this case, the order in question should not be rescinded. That order has all the force and qualities of a decree; and although it may be competent upon petition to vacate the enrolment of a decree alleged to have been obtained by surprise, as may be inferred from the case of *Oliver vs. Palmer and Hamilton*, 11 G. & J., 137; it is very clear that the general law of the Court is the other way, and that after a decree has been enrolled, it cannot be reheard upon petition, and that the remedy is by bill of review, *Burch vs. Scott*, 1 G. & J., 393. Several terms had intervened between the passage of this order, and the filing of the petition which seeks to vacate it. It is an application, then, (by peti-